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## Proceedings of the Annual Meeting of the State Bar Association of North Dakota Held at Bismarck, North Dakota August 25, 26, 27, 1947

North Dakota State Bar Association

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PROCEEDINGS  
of the  
ANNUAL MEETING  
of the  
STATE BAR ASSOCIATION OF NORTH DAKOTA  
HELD AT BISMARCK, NORTH DAKOTA  
AUGUST 25, 26, 27, 1947

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The annual meeting was called to order on the 25th day of August, 1947, at 2 P.M., President H. A. Mackoff, presiding:

PRESIDENT MACKOFF: Members of the Bar, it is my pleasure to now call the 1947 annual meeting to order. We want to get started on time because we are going to be very limited. The sectional meetings are to follow as indicated in the program here at 3 o'clock. That gives us about 55 minutes or almost an hour and the President's Address ought to take at least an hour and a half or two so we ought to hurry along. (Laughter)

I will ask Reverend Joseph Bachman, of Bismarck, to give the invocation.

REVEREND JOSEPH BACHMAN: Almighty God, our Heavenly Father, Thou art the eternal order of the universe. Our human laws at best are but an approximation of Thine immutable law. We beseech Thee now for those who are set to interpret the laws of our nation. Grant to all of us a deep consciousness that we are called of God to see justice done. Fill us with a high determination to make the courts of our land a strong fortress of defense for the poor and the weak and never a castle of oppression for the hard or the cunning.

Save us this day, O God, from surrendering the dear bought safeguards of the people for which our fathers fought and suffered. Revive in us the spirit of the great liberators of the past that we may cleanse the law of inherited wrongs that still cling to it and to us. Through Jesus Christ, our Lord, Amen.

PRESIDENT MACKOFF: Perhaps it would be well at the very outset to consider the appointing of a Resolutions Committee. The Resolutions Committee will have a number of things to do and it would be well to have them know from the very beginning that there will be a certain duty imposed on them, and so a motion will be in order for the appointment of a Resolutions Committee.

(Motion made and seconded that the appointment of a Resolutions Committee take place).

PRESIDENT MACKOFF: You have heard the motion. Is there any discussion? If none, all in favor signify by saying "aye"; contrary the same. The motion prevails. I will appoint Clyde Duffy and Al Strutz and Ed McIlraith on the Resolutions Committee.

Is the Vice President in the House? I see he is. Would you be good enough to come up, Mack Traynor, and I will turn the chair over to you for an hour or two while I deliver myself of my address.

(Mr. Traynor proceeds to take the chair).

PRESIDENT MACKOFF: Gentlemen, your Vice President, to whom I am now turning over the chair.

MR. TRAYNOR: We shall now have the pleasure, Gentlemen, of hearing the President's Report.

### PRESIDENT'S ADDRESS

H. A. Mackoff

To the Members of the North Dakota Bar Association:

Now that my year of service as your president is about to terminate, I desire to report to you our activities during the past year.

It is only natural that we should have had a fairly busy year when we consider that this has been the first year in several during which we were able to resume somewhat normal activities. In the recent past we were preoccupied with the war effort, travel was curtailed and difficult, and we had more pressing national problems with the result that some meetings were cancelled and the activities of the association necessarily reduced to a minimum. My predecessors in office are to be commended for the work they did in keeping the association intact during a very trying period.

I have been very fortunate in the personnel of the Executive Committee this year. They are busy men, and prominent in their profession, but they invariably laid their business aside and traveled long distances to attend any meetings that were called. We had four meetings during the year in addition to the one held at the time of the convention. These meetings were almost 100% in attendance. They worked faithfully and diligently, and whatever progress has been made during the year is in a very large measure due to their counsel, effort, and diligence.

Under our present constitution and by-laws, the entire Executive Committee, with the exception of the retiring president and the incoming president, in case he served as vice-president, an entirely new Executive Committee takes over. I believe it would be helpful to the incoming president if at least half of the members of this Committee could continue on into the next year. In this way, the incoming new members would benefit by the knowledge of the members who had served during the previous year.

Like Executive Committees in the past, we found that our principal difficulty was the lack of sufficient finance to place the organization on a properly functioning basis. The revenue heretofore received was entirely inadequate, being approximately the sum of \$3200 annually. It may be of interest to you to know that the average cost of an Executive Committee meeting is between \$150 and \$200 for the actual expenses in travel, hotel, and meals. To properly serve the organization, at least two to four meetings a year are necessary, and you can readily see that with the income we are receiving, we would necessarily be hampered in our activities.

The Executive Committee was also cognizant of the fact that for some time there has been a demand for a full time executive director who could devote all of his time and attention to the affairs of the association. The president cannot very well lay all of his business aside and devote all of his time to the duties of the office. The

compensation of the secretary has been inadequate to the demands of the office with the result that many things remained undone.

Realizing the needs of our association and our financial difficulties, we cast about for ways and means to solve our problem. The consensus among the lawyers appeared to be against an increase in the license fees. Many thought that a sufficient amount could be raised by voluntary contributions from members of the bar.

We decided upon the latter course, but that was somewhat difficult, and entailed considerable work in organizing a campaign over the state, and in the end, the results obtained were inadequate, and in some respects inequitable. We realized a total of some \$1900, with an average contribution of about \$10. This meant that no contribution whatever was made by the other 60% of the members of the bar.

It was then that Honorable W. H. Shure, of the Fargo Bar, suggested the plan which is covered in the legislation known as Chapter 228 of the 1947 Session Laws. That appeared to be the only solution, and while the bar was not unanimous in its favor, the overwhelming majority was.

After due consideration of the matter by the Legislative Committee, and at my request, Senator Shure caused this bill to be introduced in the Senate. He worked very diligently and conscientiously for its passage and a great deal of the credit in seeing this bill through the Legislature is due to him.

Like credit is also to be given to Honorables Vernon M. Johnson, of Wahpeton, the Speaker of the House, as well as Judge Fred J. Graham, of Ellendale, Manfred R. Ohnstad, of West Fargo, Colonel C. F. Brickner, of Fargo, and Roy Holland, of LaMoure, who were members of the Legislature, as well as to Honorable Carroll E. Day, of Grand Forks, a member of the Senate. Each one of these men took a very active interest in the measure and devoted much time, not only to the passage of this bill, but to all of the legislation that was sponsored by our Legislative Committee.

May I at this time digress a moment to pay a word of tribute to our Legislative and Judiciary committees. These committees were active throughout the entire session and were responsible in the preparation of many measures introduced that were intended to improve procedure and to benefit the public in the use of the courts of this state. This committee was likewise active in the measure concerning the increase of judges' salaries that were so long overdue.

Besides the members of the Legislature who were on the committee, I want to give credit particularly to Honorables Alvin C. Strutz, George F. Shafer, and George S. Register, of Bismarck, as well as Honorable A. R. Bergesen, of Fargo, and R. G. Beede of Elgin. All these men devoted a great deal of time during the session in looking after pending legislation in which we were interested.

Returning to Chapter 228, it is too early at this time to foretell what the result of this law is going to be. We are as yet not receiving full returns from all counties. About two-thirds of the counties have made remittances up to now, and judging by the results obtained thus far, we anticipate that there will ultimately be an annual revenue of \$10,000 to \$12,000.

Because of the uncertainty of the revenue at this time, the Executive Committee felt that the appointment of a full-time Executive Director might be premature and that it was preferable to appoint only a part-time Executive Director who could devote a substantial part of his time to the duties of the office. After we have had some experience in this respect and know a little more about what our income may be, we shall be in a better position to determine the advisability of a full-time Director and other details in connection therewith.

Your committee selected Colonel Ronald N. Davies, of Grand Forks, to the position of Director on a part-time basis until such time when we may know more definitely concerning our income and plans have been formulated for the activities of our association. The matter of a full-time Executive Director will no doubt receive the attention of the officers who will follow.

Since we are an integrated bar to which every lawyer must belong, and we are officers of the court, our association has a certain responsibility to the public in connection with the practice of our profession. We hope that in time the public and the members of the bar will realize the equitableness of the measure that will enable us to perform the functions that are expected of an integrated bar and in the improvement of the judicial system in this state.

Now a word concerning our lecture course. I know that we all enjoy the sociability of an annual meeting, but more and more we are becoming conscious that the important thing at the meeting is the opportunity to discuss our mutual problems and the constant changes in conditions and in our laws. The sectional meetings were the result of this demand and it fulfilled a great need and were in a great measure responsible for the increased attendance at bar meetings in recent years.

In keeping with this idea we tried to enhance the interest by adding lecture courses on important topics of the day. We discussed this at Executive Committee meetings, and it was the consensus that a lecture course on Federal Income Tax was most needed at this time. I had occasion to call attention to this in the President's Page in Bar Briefs. This is a subject that is daily becoming increasingly important.

The Federal Income Tax and its ramifications is something that touches almost every phase of the law and has become a daily problem to the lawyer. The laws of Federal taxation, and particularly income tax, has developed very rapidly in recent years and a great many changes have been made, with the result that the average lawyer, particularly in the less populated communities where certain Federal Reports and Tax Ruling and Regulations are not available, has found it very difficult to keep abreast of developments.

Our experience in recent years should make us realize that if we are to properly serve our clients, we must become better informed in this field. Too many of us glibly admit we are uninformed on Federal Income Tax matters, and it has become the common practice for us to send our clients to be advised by others who are not as well equipped to render the service as is the lawyer. We have abdicated this field of law to laymen, such as bankers, realtors, abstractors, accountants, and to others who apparently hold themselves out as tax experts.

We have no criticism of these respective callings or professions. They fill a public need in their respective fields, but it appears to me

that a course of training in their respective fields does not necessarily qualify them in the science of law. It has become the practice of some laymen who look upon themselves as tax experts to not only fill out income tax returns or to advise in matters which are legitimately in their sphere of knowledge, but to prepare various legal documents and to give opinions on questions of law. Many laymen now undertake to give legal advice as to what constitutes a joint venture, a partnership, an association, or corporation; the nature, effect, and validity of certain contracts; what constitutes a gift or a trust; the kind of trusts to select and the manner of setting them up; what form a will should take; and in general undertake to deal with matters that are entirely within the knowledge of one trained in the law, and thus invade the field of the practice of law.

It is true that certain laymen have sufficient native ability and intelligence to enable them to obtain a smattering of some of the mechanics of the legal profession, such as filling out of blanks or knowledge concerning certain rules and regulations adopted by administrative departments, but this knowledge does not mean they understand the fundamentals of the law and its ramifications or that they are scientifically trained to properly serve the public seeking information for the protection or preservation of its property.

Merle H. Miller, of the Indiana Bar, in his monograph of Tax Planning, issued by Practising Law Institute, in referring to this topic in the Foreword to this monograph, states:

"It is for this type of work that lawyers are particularly well adapted if they keep in mind the development of our common law. When we consider the great mass of our law which has grown up wholly as a result of court decisions, we should not be too much surprised if present courts continue to make decisions that have the effect of developing what might be termed a common law of taxation. . . ."

It appears to me that we surrendered a most important field of the practice of law, and one that affects almost every daily transaction, to others who are not equipped to render the service and who are not scientifically trained therein. The public is not being served by permitting laymen to attempt to render the service. The trouble, it seems to me, is not only with the public, but as much with the lawyers who have come to recognize certain laymen, or the so-called tax experts, as a sort of "practical lawyer."

Recognizing the importance of this subject and the need to recapture the practice in this branch of the law, our Executive Committee decided on sponsoring the Federal Income Tax course this year with the thought that if it proves popular, similar course may be continued in the future. It was our good fortune to be able to bring to you Professor Henry Rottschaefer, of the University of Minnesota Law School, and an outstanding authority in the field of constitutional law and Federal Taxation, who is giving the lectures during our meeting.

I hope that this will be but a beginning in this direction. We recognize that three half days are necessarily all too short for such a course, but it was our opinion that until a greater interest is aroused among the members, we could not expect any substantial attendance of

any annual meeting lasting beyond two and a half to three days. We therefore decided on the three forenoons to be used for the lectures and the two half days for the business part of the meeting. I believe about a week is needed for a course as important as this.

To put on this lecture course we had to necessarily cut down on our sectional meetings. In order not to entirely eliminate the sectional meetings or to permit the lecture courses to encroach too much on them, it may be that a solution can be found by offering special annual short courses at our University at a time other than the annual meeting and when most convenient for the members of the bar who are interested enough to attend them, thus leaving more time for sectional meetings at the annual meeting. We do not know whether there will be enough interest on the part of the bar to want to take several days and perhaps as much as a week for a special course either on Federal Taxation or other topics that may be given from time to time, but it seems that kindred courses proved popular in other fields.

My attention was recently called to the School of Banking at the University of Wisconsin that was sponsored by the Central States Conference of the American Bankers Association. This course, which lasts some 10 days, was first offered in 1945. There were 47 who attended the regional meeting the first year; and there were 131 who attended in 1946; and in 1947 the attendance increased to 290. It is not at all unlikely that while we may start with a small number who would be willing to devote a week's time to a lecture course on a topic of the day, it is probable that such number will greatly increase as we learn more about the possibilities and advantages thereof.

I want to touch on another matter, and that is with reference to the lawyer and the Legislature. We have heard considerable about lawyers being unpopular with the Legislature, and that the surest way to kill any measure is to let it be known that the lawyers are interested in or favor such measure. From the little that I observed during the last session of the Legislature, I believe that this is an erroneous impression. We found a very cooperative attitude on the part of the members of the Legislature. If we had anything of merit, it received the earnest consideration of the members. I should like to see a closer bond between our association and the members of the Legislature. If we can in time prove to the Legislature that our association will sponsor measures that are for the public welfare only, rather than to favor any particular group or individual, I have every reason to believe that we will have favorable reception in appearances in support of any measures.

In this connection I believe it is well for our association to cooperate in turn with the members of the Legislature. We all know that a new member who is first elected to the Legislature has difficulty in understanding the procedure in the House and the Senate and how a law is set into motion and ultimately enacted. There is none who can be more helpful in enlightening these men than the members of the bar, and particularly those who have themselves served several sessions in either branch of the Legislature. We have many of them in North Dakota.

I suggest that earnest consideration be given to the project of setting up courses in law-making to be sponsored by the North Dakota Bar Association for new as well as older members of the Legislature

who desire to take advantage of such courses. I am sure that such men will be appreciative of the help rendered and will enable them to better serve our state and the respective communities they represent. A course of this sort will necessarily involve an expenditure of funds by our association, but it is for the welfare of the public, and in my opinion is therefore justified.

A word or two more about committees before I close. I believe a greater measure of efficiency can be had if we revamp the practice of the appointment of committees. We have a large state and committees too often are composed of members who live at extreme ends in the state. It would appear to me that if we had committees of, say, only three who were selected from either one city or from the immediate vicinity, that these members would be able to meet and discuss their problem and render a better report than can be done under the present practice.

Thus far we have not arranged for the payment of travel expense for committee members, and it would be entirely too costly and beyond our means to attempt meetings of committees under present methods of appointment. However, if we had small committees with members living in the immediate vicinity, they could, with very little expense, hold one or two meetings a year and thus render a better service to the association. I would advocate the payment of travel expenses for such meetings, as they would not be prohibitive under such an arrangement.

May I take this opportunity to say that I am deeply grateful to you for the honor you conferred on me in permitting me to serve you as your president for the past year. I know that there are things that might have been done that remain undone, but we made an effort to add to the progress that has already been made by our organization over the years. I trust that what we have done will meet with your approval and that it will be received in the spirit in which the service was rendered.

I want to add something to this report that I didn't include here and that is that I want to urge the continuation of the district and the county bar meetings. I think that there is nothing in the organization that will create greater enthusiasm on the part of the members and a greater willingness on their part to participate in the activities than the existence of active district and county bar associations. I had occasion to refer to those, I think, in the first President's Page that I had published in the Bar Briefs after I came to office. I think it would be a very wholesome thing to have that practice continued in the future, and if we do, the state association will find it is in a position of being able to carry out any plans that it may have much more easily than in the case where they have to go out over the state and try to find some individual here and another one there for the purpose of carrying out a certain duty or function that they desire to have carried out.

Again, I want to say it has truly been a pleasure to have been your President the past year, and I thank you very much. (Applause)

MR. TRAYNOR: Thank you, Mr. President, for a very fine report, and to you I release the gavel.

PRESIDENT MACKOFF: Now this, while it is called a report, I don't want anybody here to labor under the misapprehension you are



going to discuss this. This is the President's Address for this purpose; no discussion on that. (Laughter)

I think it would be well for us now to take up the Reports of Committees for the additional time, 25 minutes or so that we have, and perhaps the report that should come first that will be of interest to you will be our Secretary's report of the financial condition of the association.

(Financial report read by Secretary McBride).

PRESIDENT MACKOFF: Thank you, Mr. McBride. May I say with reference to this report that this report was an audited report by an auditor. We have a full report that is set out over here. The auditor went through the entire accounts of the Secretary and it is all listed in the report that is here, and while you may think at the moment we are rich—we have some \$7,000—we still have some bills unpaid. There is the auditor and there is the Executive Committee meeting, that is to come out, and several others, but I do believe I am safe in saying that we will probably wind up at the present time with roughly between \$6500 and perhaps \$6800 of money on hand and we anticipate that there will, of course, be additional revenue to come in. I think it will probably be about what we had anticipated, and it isn't going to be as large as some had thought. Some seemed to have the feeling that we are going to have some \$30,000 or \$40,000 a year—I wish it were true—but it isn't so.

With reference to this report, the Executive Committee had it under consideration and the Executive Committee approved the report, but I think it would be well to also have a committee appointed from the members of the Bar here to go over this report and to bring in its approval. I will appoint on this committee General Baird and Bob Birdzell. So, for the moment we will pass this, and when you have had the opportunity to go over this audit we would like to have your report on it.

Now what other reports do we have here at the moment, Mr. McBride?

SECRETARY MCBRIDE: I have only one report—"Report of Committee on Legal Education"—If you desire I will read it; it is very short.

PRESIDENT MACKOFF: Since it is a short one you may as well read it.

(The above referred to report was read by Mr. McBride, dealing with law school education).

PRESIDENT MACKOFF: What is your pleasure in connection with this report?

DEAN THORMODSGARD: Mr. Chairman: I move we approve and adopt it.

PRESIDENT MACKOFF: Dean Thormodsgard, of Grand Forks, moves the adoption of the report. Is there a second to it?

MR. NOSTDAL: I second the motion.

PRESIDENT MACKOFF: Is there any discussion? Well, you all heard the motion—you know what the report is—Now all in favor of

the motion will signify by saying "aye"; contrary the same. The motion prevails. You say you have no other reports?

SECRETARY MCBRIDE: I have the report on Standard Examinations, but as that was published in Bar Briefs I thought maybe we wouldn't want to take any action on that.

PRESIDENT MACKOFF: Would you Mr. Burnett, or you, Dean Thormodsgard, care to take it up and give us the highlights of that?

DEAN THORMODSGARD: I will not read the report, but I will just call attention to some of the points involved. Reference was made to an article printed in Bar Briefs in April on the National conference on Uniform State Laws, pointing out that the Conference has approved 58 Uniform and Model Acts and the State of North Dakota has adopted 28 of them. Since the Legislature will not be in session in 1949 there is no immediate demand to make specific recommendations as to certain Model Acts and Uniform Acts. The Committee wished to call the attention to the lawyers that they may consider the Uniform Fiduciary Act of 1922, insofar as that our sister State of South Dakota, as well as the State of Minnesota, have adopted that important Act and there may be some merits if we follow South Dakota and Minnesota. Then there are several who have recommended that we should consider the Uniform Contribution Among Joint Tortfeasors Act of 1939—1939 is the year of the Conference approval. Then you have the Uniform Vital Statistics Act of 1942—the State of Minnesota adopted it last year—the point being that if the states do not give that service of giving adequate records of men, women, and children, why it may become necessary for Congress to act, and Congress is about ready to act. If the states adopt more or less as a standard Uniform act, why perhaps Congress will not enact the proposed legislation due to universal military service, due to shifting of population from one state to another, and Old Age Pension Act, and others. The Uniform Vital Statistics Act has certain merits. Then, since under the Federal law a person may be domiciled in more than one state, they have two important acts adopted in 1943 approved of the Inter-state Arbitration of Death Taxes and the Inter-state Compromise on Death Taxes insofar as inheritance taxes where a person may die maintaining a residence in two states or more. From time to time, comments will be made and printed in the Bar Briefs as to the various proposed Acts, uniform Acts and model Acts, that are under consideration. The Commissioners will meet this year the week of September 15th in Cleveland and are at the present time making a very comprehensive study and will codify the entire commercial law—commercial code—which will take two or three years.

Mr. Chairman: I move that this report be accepted.

MR. McGRAY: I second it.

PRESIDENT MACKOFF: It is understood that in the motions for the adoptions of these various reports that they are to be printed in the Bar Briefs to be issued.

Is there any discussion with reference to this report? If there is none, all of you in favor of this motion will signify by saying "aye"; contrary the same. The motion carried. The report will be adopted and ordered printed.

PRESIDENT MACKOFF: Do you have any other reports, Mr. McBride?

SECRETARY MCBRIDE: No, your Honor. (Laughter)

PRESIDENT MACKOFF: Well, that is as far as I will ever get to being a judge so don't misunderstand. (Laughter) I thank you for the honor of addressing me that way. I have always been on the other side of the table; it feels good if it is only through a slip of the tongue.

Colonel Davies, I believe you have something on a report from Vernon Johnson.

COLONEL DAVIES: Mr. President, I read the following report:

(Legislative report dealing with certain proposed bills read by Colonel Davies).

COLONEL DAVIES: On behalf of the Chairman, who is not present, I move the adoption of the report.

PRESIDENT MACKOFF: Is there a second to it?

MR. LUNDBERG: I second it.

PRESIDENT MACKOFF: You have heard the report of the Legislative Committee. Is there any discussion? If not, all those in favor of the adoption of the report will signify by saying "Aye"; contrary the same. The report is adopted and ordered printed in Bar Briefs.

Are there any other reports at this time?

SECRETARY MCBRIDE: I have none.

PRESIDENT MACKOFF: Are there any committees who have reports in the making or desire to have them submitted at the meeting? If so, we would like to know so that we can gauge our time accordingly.

MR. McGRAY: On behalf of the Editorial Committee, I would like to say that our report is contained in the editorial statements that we have made in the three issues that have been put out so far. Mr. President, we have made one big error. I wish I could pass the buck for that to some other member of the committee, but it is my own headache. We should have had the issues numbered consecutively so as to facilitate numbering; however, we will write the index accordingly so that you will know what we mean as we say it. There will be a self-explanatory statement at the head of the index.

PRESIDENT MACKOFF: Do you desire to have that in the form of a report?

MR. McGRAY: No, I just want to pass that on for your information so you will know we know of the error.

PRESIDENT MACKOFF: Yes. I want to say we have been very fortunate in our Editorial Committee this year. They entered upon their duties without the expectation of any pay whatever and devoted considerable time to it, and I want to express the thanks of the association publicly to the three members of the Committee consisting of—I am going to say Miss Leslie first in spite of the fact she is not the Chairman—and Archie McGray, who is the Chairman, and Linn Sherman who are the Editorial Committee. They did a very fine job and I am sure that as time goes on we will find our Bar Briefs will continue and will improve with more material and material that I hope will meet with the approval of the members of the bar.

Now, if there isn't anything further I am going to adjourn or recess the meeting on account of the sectional meeting that is to follow.

AUGUST 26, 1947

The annual meeting was resumed on the 26th day of August, 1947, at 2 P. M., President H. A. Mackoff, presiding:

PRESIDENT MACKOFF: Members of the Bar, the meeting will come to order. We will take up the matter of the election of officers which was made a special order of business for today. The chair will now consider nominations for the office of President of the association for the coming year.

MR. DUFFY: Mr. President, I place in nomination Mack V. Traynor of Devils Lake. (Applause)

MR. NOSTDAL: Mr. President, on behalf of the Pierce County Bar now being represented here by six members of the Bar, we wish to second the nomination for Mack Traynor for President.

PRESIDENT MACKOFF: Are there any other?

MR. BURNETT: Mr. President, if it is not out of order I would like to make the motion that the rules be suspended if there are no other nominations and that the Secretary be instructed to cast the unanimous vote for Mack Traynor. If that motion is in order I would like to make it.

MR. NORTON: Mr. President, it gives me exceeding pleasure to have the opportunity of seconding the nomination of Mack Traynor for President. I think I have known Mack probably longer than anyone here. I remember when he came to Devils Lake and I am reminded that he is somewhat of a western boy and he has spent a couple of years at Hettinger in his early boyhood days, and of all the young men I have known in the state, none has been a finer fellow or gave more promise as a boy than Mack and he has developed into the fine, outstanding lawyer that he is today. I feel sure that he will make one of the best Presidents that this organization has ever had. I want to second his nomination and second the motion of Mr. Burnett.

PRESIDENT MACKOFF: You have heard the motion of Mr. Burnett, seconded by Mr. Norton. Is there any discussion of this motion? If not, all in favor of this motion will signify by saying "Aye"; contrary the same. The motion prevailed.

SECRETARY MCBRIDE: Mr. President, I take great pleasure in casting the unanimous ballot of this convention for Mack Traynor of Devils Lake for President of your Association for the coming year.

PRESIDENT MACKOFF: I think we may as well start right now and have him brought up here to assume some of the responsibilities of the office. I will ask Mr. Duffy and Roy Ployhar to accompany or bring the newly elected President to the roster, please.

I welcome you up here, Mr. Traynor, as President of this Association.

Thank you, Gentlemen.

PRESIDENT MACKOFF (Continuing): If you have anything to say in defense of yourself this is the time and this is the place.

MR. TRAYNOR: I have been wondering for a whole year just why I have been Vice President. Now I find out that he can be elevated to be President. You know, I think the By-Laws state that

the Vice President shall only act in the absence or disability of the President. Well, the President hasn't been absent during the year; he has certainly been about the most active fellow that I have known, and his activity is shown by the fine work that this Association has accomplished in the last year. He is not a very big fellow, but he has got big shoes; they are going to be hard to fill; I don't know just how I'll fill them; I may put both feet in one shoe at a time and try it that way. If I can carry on the work that my friend, Mack, has commenced this year and the way he has commenced it, I know that we will have a fine year and a fine Association built up here. (Applause)

PRESIDENT MACKOFF: Thank you very kindly for those kind words. I want you to know that this wasn't all prepared in advance and arranged so that he would give me this send-off, but I appreciate these kind words on his part anyway and I am sure that you are going to have a fine, active President. Let me say that there wasn't a time when we called him for any matter, whether it was for some conference or meeting or long distance or something, that he wasn't always there ready to do whatever he could, and I am sure that the Association will prosper under his regime or under his guidance.

We will now consider the election of a Vice President.

MR. NILLES: Mr. President, Members of the Association: As our newly elected President has so well stated, we have had a President during the past year who has done a prodigious amount of work; there is much to be done in the future. We need a man, should have a man, who has that capacity and who has shown that interest in the affairs of our Bar Association. It is my honor and privilege to place in nomination George Soule, of Fargo, who, in my opinion, has contributed as much to the success of this association in past years as any of its members. I can recall that he was the leader in the institution of our sectional meetings. He gave freely of his time and effort, to my personal knowledge, and I think has made a contribution which will go down in history of this association as one of the outstanding accomplishments, one of the things that has brought our men together and one of the things which, I think, so far as the future is concerned, will lend greatly to the intelligence, ability, and the standing of our lawyers at the Bar; and for that reason, Mr. President, I place George Soule's name in nomination for Vice President. (Applause)

MR. REMINGTON: A week ago last Saturday the Bar of the Third Judicial District met at Wahpeton and there, by unanimous vote of those present, I was commissioned to place in nomination the name of a member of the bar of the Third Judicial District. I will confess that were the tables reversed you would hear a better nominating speech. If C. G. Bangert of the Ransom County Bar were here nominating me, there would be a better nominating speech but a much poorer nominee. Mr. Bangert's services to the Bar Association are outstanding. Mr. Bangert has pioneered in many of the things that the Bar Association has accomplished. I am sure that none of you have forgotten the work which Mr. Bangert did in the matter of the unlicensed practice of law by means of sometimes the stiff club and sometimes kindly diplomacy. It brought many of the banking institutions of the state into the line so that they no longer conduct any considerable portion of the practice of law. Further, Mr. Bangert was the man who as far as we know in our district, first made a study of

the means by which the South Dakota code had been rewritten and from that work there sprung the bill which resulted in the new North Dakota code. We are in the midst now of a legislative program. We have accomplished a great deal under the very, very able leadership of Mr. Mackoff. Some of us didn't realize until we came up here just how much of his own time had been taken from his own business. In 1949 there will be a session of the legislature, and if Mr. Bangert passing through the Vice President's chair, should be our President at that time we will have a man who is a well versed and well experienced in the legislature. He can pick up the work that Mr. Mackoff laid down and set through and perfect what experience shows not to be perfect and carry on the legislative program of this association, which I deem to be very important. Mr. Bangert is not here today; Mr. Bangert had a case set in Minneapolis. His friends urged him to continue it but they knew he couldn't because to continue a case there means a year or more. He said "No, but if this honor should be given me and I should pass on to be the President of the State Bar Association, it would be the greatest honor that was ever given me. But," he said, "I will not go out there and let people think that I am button-holing." He said, "If I am started on this trail of glory it will be by the spontaneous and the unsolicited act of my fellow attorneys." Mr. Bangert, while he is still vigorous and full of dynamic energy, is 68 years of age, and if you are at any time to honor him it is just about time that we do it now. So, on behalf of the Third Judicial District, which District feels that it is just about our turn—Judge Hutchinson was the last President of this District to be President of the Association—we feel that it is about our turn. We feel that we place before you a nominee who is at all times interested in the welfare of the lawyers. He has been sincere in his devotion to the welfare of the fellow members of his profession.

I take great pleasure, in my poor and humble way, in discharging the duty which was entrusted to me by the Third Judicial Bar Association. (Applause)

MR. WISHEK: I would like to second the nomination of Mr. Bangert who is an outstanding attorney in our District & also in the State of North Dakota. I might state that the rank and file of the Bar down in the Third Judicial District feel that it is time that we had the presidency in our particular section of the state. We haven't had a President for many years and the general feeling of the Bar in our District is that we should have the honor a year from now, and in behalf of McIntosh County, I very warmly second the nomination for Charley Bangert.

MR. PLOYHAR: Mr. Mackoff, I wouldn't hardly be doing my duty if I didn't rise at this point to second the nomination of my friend, George Soule. I worked alongside George for the last 10 years or more in connection with Bar Association activities, and I believe that I can truthfully say that George has done probably more than any other member of this Association to promote the interest of the Association during those trying times we heard spoken of a while ago. George has been a very diligent workman. He has been on the Committee for the matter of preparing the various types of papers that we have had presented at this Association for the last 10 years. He has always been very active; he has always given of his time and effort without any

reward in mind whatsoever. Not only that, he has had the experience and the background of the operation of his Association, having served on the Executive Committee for some time, and I certainly feel that this Association would be greatly benefited by elevating George Soule to the Vice Presidency, and it is certainly a pleasure on my part to second the nomination of George Soule. (Applause)

PRESIDENT MACKOFF: Any other nominations?

JUDGE HUTCHINSON: Mr. President, as a Member of the Bar in the Third Judicial District, I want to testify that we have had no member who has been more active in all the years that I have lived in that District than Charley Bangert. He was never placed upon a committee but what he did his work and did it well. He has always been a faithful attendant at all of our meetings and has taken a great interest in all the Association's work, and I wish to second his nomination. (Applause)

PRESIDENT MACKOFF: Any other nominations?

MR. BURDICK: Mr. President, I move that nominations be closed.

PRESIDENT MACKOFF: Is there a second to that?

(The motion was seconded by a member).

PRESIDENT MACKOFF: All in favor of this motion signify by saying "Aye"; contrary the same. Motion carried. The Secretary will prepare the ballots to be distributed to the members. I will appoint a committee consisting of the nominators, Mr. Duffy and Mr. Remington, and Mr. Ed McIlraith and Mr. H. G. Nilles to gather up the ballots and to tally the vote and report the results. If you will kindly bring them up to the Secretary's official desk over here.

Perhaps to expedite matters somewhat so we can be on schedule I would like to take up some other business while we are waiting for the report. There is a report here of the Auditing Committee. The Secretary will read this report; it is a very short one and we can dispose of that. As you will recall, we had an auditor prepare the audit and it was approved by the Executive Committee and then we had the Committee from among the members of the Bar to also consider this audit and the additional figures that have arisen since the audit was made on August 18 so as to bring it up to the present time. Mr. McBride, will you please read the report.

(The above referred to report was read by Secretary McBride)

GENERAL BAIRD: Mr. President, I move the adoption.

MR. NOSTDAL: I second it.

PRESIDENT MACKOFF: Is there any discussion concerning this? If not, all in favor signify by saying "Aye"; contrary the same. Motion carried and the report is approved and is ordered printed.

It appears now as though the Committee is through and this is the result of the voting as tallied by the Committee appointed. Well, the majority, would you care to have the exact number of votes or merely the result?

MR. NOSTDAL: No, just the result.

PRESIDENT MACKOFF: Well, you have elected to the office of Vice President, Mr. George Soule of Fargo, North Dakota.

PRESIDENT MACKOFF: We will now consider the nomination for the office of Secretary. I might say that the duties of the office of Secretary have been changed because of changed conditions. I don't know whether that is known generally to the members of the Bar. Heretofore, the Secretary who had served had a task of taking care of the Association's business, and it is a big task; it involves a lot of work, and, unfortunately, our budget was such that we never could adequately pay for the services of the Secretary. Now that the conditions have changed, we have provided for the actual work to be done by an Executive Director and the office of Secretary will be honorary just the same as the other officers of the Association. While the Constitution provides for a salary to be fixed for the Secretary at such sum as the Executive Committee may see fit, the intention in any event is not to pay any substantial amount anyway except such as necessarily incurred in connection with whatever duties may have to be carried out by the office. I thought I would explain that matter to you in making the nominations for the office of Secretary-Treasurer—I want to say the offices are combined.

MR. JANSONIUS: Mr. President, I would like to place in nomination the name of a young Bismarck attorney who commenced practice in Bismarck shortly before the war, served quite a long time in the armed forces, and is now back in Bismarck practicing. His name is William Murray.

PRESIDENT MACKOFF: Are there any other nominations?

MR. REMINGTON: Mr. President, I should like to submit the nomination of Mr. Ron Davies of the Grand Forks Bar.

MR. DAVIES: Mr. President, so long as I will serve as a part-time Executive Director of the Association, I would not consider it prudent to accept an elective office.

PRESIDENT MACKOFF: I might state that Mr. Davies had expressed that thought that he felt that being the Executive Director that the Executive Committee should be free to deal with the Executive Director whether it is Mr. Davies or anyone else.

Are there any other nominations?

MR. NOSTDAL: Mr. President, we have had the Secretary for many years. He worked at first for practically no salary. He has done a lot of work. Mr. McBride has indicated that he does not seek reelection, but I am sure the Association knows Mack has a great vote of confidence, the vote of appreciation for the work he has done. He has brought the Association through some very difficult times, but I shall not nominate Mr. McBride because he has indicated that he does not wish to be nominated.

PRESIDENT MACKOFF: I will consider a motion for such vote of appreciation later on, Mr. Nostdal. I think your point is well taken. He deserves the commendation of the Association. He has told me that he does not desire to continue with the office. Am I right, Mr. McBride?

SECRETARY MCBRIDE: That is right, yes.

PRESIDENT MACKOFF: But I am very happy, Mr. Nostdal, to know that you expressed this idea and it is my intention to ask later on for a resolution to that effect.



MR. BURDICK: Mr. President, I move the nominations be closed and that the Secretary cast a unanimous ballot for this Association for Mr. Murray for Secretary-Treasurer.

(The motion was seconded by a Member)

PRESIDENT MACKOFF: Any remarks? If not, all in favor of the motion will signify by saying "Aye"; contrary the same. The motion prevailed and the Secretary is instructed to cast the unanimous ballot in favor of Bill Murray of Bismarck as Secretary-Treasurer of the Association.

SECRETARY MCBRIDE: I take great pleasure, Gentlemen, in casting the unanimous vote of this Association for Bill Murray of Bismarck as Secretary-Treasurer of this Association. (Applause)

PRESIDENT MACKOFF: I am sorry I overlooked to make this a matter of record. I want to have the record show that George Soule was duly declared and elected Vice President of the Association and Bill Murray was duly elected as Secretary-Treasurer of the Association. I will have occasion to call on you, Vice President, a little bit later on.

We are getting towards the hour when we were looking forward to the honored guest that was to speak to us this afternoon, and we want to keep as much on time as possible. I see we are getting towards 3 o'clock and see that President Rix is in the audience. I will ask Mr. Conny of Fargo and Judge Christianson to accompany or to escort the President of the American Bar Association to the Rostrum.

PRESIDENT MACKOFF: Members of the Bar, for a number of years we have been hoping that the American Bar Association would confer the honor on us by having one of its high officers present at our meeting. As you know, in recent times things have been rather difficult. We had the war period, and naturally many of them couldn't come. I know some of them had promised to attend our meetings and had not been able to come; something had developed where they were unable to do so.

When I was down to the Atlantic City meeting of the American Bar Association I met President Rix at that time and I asked him about the meeting. As busy as he was at that time, and perhaps it was a rather inopportune time to speak to him because you can well imagine that at a meeting of the American Bar Association where so many are present, so many desire to speak to him and ask him so many things. Frankly, I was amazed at the ability for him to be able to meet all the occasions promptly and to remember all the things that had gone on. I didn't expect that I had made an impression on President Rix—that he would remember me or that he would recall that I had asked him in this turmoil to come to North Dakota and speak to us at our annual meeting. However, he remembered the promise and when I wrote him officially later on inviting him to come here, he recalled the conversation we had at Atlantic City and he graciously consented to come and he arranged his schedule so he could come. I have a very high regard for President Rix—what I had seen of him he impressed me personally as a most delightful sort of a gentleman; he is a very able scholar; he had been a teacher at one time at Marquette, in fact, quite recently, teaching part of the time; an outstanding lawyer in the profession—one that is looked up to by all that know

him;—and the American Bar Association, I think, is very fortunate to have had this man serve as President during the past year. He has done a remarkably fine job in accomplishing so many things for the American Bar Association that it would take too long to begin to enumerate them.

I understand he is going to talk this afternoon in connection with, I think, some of the activities of the American Bar Association or something concerning it. He had contemplated giving a talk on our foreign policy this afternoon, but we felt that it would be better if he gave it this evening when you men will be there again and your wives or sweethearts will be along with you so that they may have the benefit of this talk. It was my pleasure to hear the high lights of it, a portion of that, at the Minnesota State Bar meeting, and I had in fact requested President Rix if he wouldn't be good enough to include at least a portion of that talk in whatever he may have to say to us over here.

Gentlemen, it is my pleasure to now present to you Honorable Carl B. Rix, President of the American Bar Association; he is from Milwaukee, Wisconsin. President Rix. (Applause)

PRESIDENT RIX: Mr. President, Members of the North Dakota Bar: It is a distinct pleasure to follow at this meeting after the remarkable meeting held last week or the week before by the Montana Bar at Great Falls. After that, I had the pleasure of going out into the primitive area beyond Great Falls up under the Continental Divide and stayed there for a week with some members of my family. I went out there for a double purpose—to get out into your wonderful western country, which all of us love so much,—and to do a very unusual thing, and that was to work on the annual address of the President to be delivered at Cleveland next month. I succeeded in both objects—in becoming reacquainted with this wonderful western country with all its brilliant future and all it means in the life of the United States. I said this morning to some of you gentlemen that owing to the social conditions in the world, and particularly in the United States, the concentration of population in great areas in which, according to sociologists, there is a lack of happiness and a lack of working together and an uneasy feeling that the future of the United States rests with you people in the smaller communities of this country. If you will look over the living conditions of these places—their social conditions, their lack of respect for law and order,—you will find that most of those conditions center in the big cities.

A number of years ago two brilliant Frenchmen wrote voluminously on this subject and pointed out the terrific social conditions which would have to be met, and they pointed out particularly that it was the life in the smaller communities where people knew how to get along together; where they considered each other's interests; where they were happier; where they could do more things and live more naturally—that would save the civilization of this country.

As a great factor in the tremendous question confronting us of law and government, I am glad to take this occasion to speak to my fellow lawyers closely and intimately. You, I know, are concerned, as all of us are concerned, with that question in the world of law and government. I will have more to say to you tonight along those lines, but I am glad that Mr. Mackoff consented that I could speak to you

when your wives were present because all over this country I have found in speaking to 15,000 lawyers in the last 10 months that the intense interest of their wives in that subject which is tied up with the foreign policy of the United States is a peak moment to them as well as you, and it was for that reason I asked your indulgence and that of your President in making that switch.

I want to talk to you this afternoon briefly about a great agency with which you are closely connected. As a prelude to what I have to say to you, I would like to have a word from your representatives in the House of Delegates, the great governing body of the American Bar Association, probably the greatest representative delegate body of men in this country. This House of Delegates is made up principally of your selections as the Bar Association delegate and your Association delegate, and in order to give you the background from them, I am going to ask them to state briefly to you just what that House of Delegates means to them and what their impressions of its operation are. You have a brilliant representative there as your State Bar Association delegate in the person of Herbert Nilles. He is rising rapidly in importance and esteem of his fellow members. It takes time, as you know, to get acquainted in any governing body of that type. You have to be there for some time. He has been there long enough now so he is obtaining a position of influence which will grow with the years, and I would like to have Mr. Nilles state to you his own impressions of our governing body. Mr. Nilles:

MR. NILLES: Mr. Rix, Members of the Association: I have been a member of the House of Delegates for, I think, about three years. Your State delegate is elected for a three years' term by ballot distributed to Members of the Bar Association in this state. We have another representative known as the Bar Association delegate, who last year, was Mr. Mackoff, who attended the meeting at Atlantic City. This year it will be Mr. Traynor. In other words, our custom is that the newly elected President will always serve as the Bar Association delegate.

I might say, Gentlemen, as Mr. Rix has stated, it isn't too easy to get acquainted; it takes a long time. There is a somewhat changing membership in the House and I suppose it can well be likened to the Senate of the United States in some respects. It does wield considerable power as it seems to me. As a matter of fact, every committee recommendation, every sectional recommendation, in fact practically anything which calls for American Bar Association approval must first or ultimately (I will put it that way) be approved by the House of Delegates; and I want to assure you, Gentlemen, that in that House you will find every shade of opinion and politics. It is obvious, of course. We have one state delegate from every state and territory. We have one Bar Association delegate from every accredited Bar Association. I don't know what the total membership is; it is over 100, I know that.

PRESIDENT RIX: One hundred seventy-five.

MR. NILLES (Continuing): One hundred seventy-five. And, of course, there are others who are members by virtue of their office. I can assure you this:—There is no question submitted to that House that is not carefully considered. In fact, everything is gone over with a fine tooth comb; and I will say this: The speeches and arguments

on occasion are brilliant; sometimes they are just fair. Of course, that is what it ought to be. The result is, I think, and I think it is obvious to all that recommendations approved by the American Bar Association carry a tremendous weight in the halls of Congress,—they certainly carry weight before the committees in Congress. A great deal of legislation now on the books has been promoted by the American Bar Association, first having gone through the House of Delegates. Now, there may be some who feel that that is an undemocratic process. I say it is a democratic process because, as I said before, every state and territory in the Union is represented—every Bar Association duly accredited is represented—and I can assure you there is nothing like a packed house or packed vote in that august body, and I am astounded as a matter of fact at the work these gentlemen do in this House. I say “this” not only for the House of Delegates but for the American Bar Association as a whole. We have a substantial number of members in this state. I hope that you will find occasion to go to some of the annual meetings. I know you will enjoy them.

Thank you very much, Mr. Rix. (Applause)

PRESIDENT RIX: Thank you, Herb. Now, Mr. Mackoff, will you give us your impressions of the work of the House and the Association?

PRESIDENT MACKOFF: I have been a member of the American Bar Association for many years. In fact, I think since the first few years after I was admitted to the Bar. I have been in attendance at quite a few meetings—not too many, probably three or four,—and personally I have profited in the attendance of the meetings alone. However, it was my pleasure the last time when I went to the convention of the American Bar Association, to go down there as the Member of the House of Delegates. Of course, being there the first time it was new to me and there was so much to do really that it was pretty difficult for a new man to come in and to be able to grasp all of the things that were being done, but I heartily approve and endorse all the things Herb Nilles said to you over here. I do believe that they are a broad, a democratic body, that are trying to represent the members of the Bar of the country as a whole.

I recall, President Rix, being down to Los Angeles one time some years back when they had the convention and when there was some difficulty. I believe at that time they were complaining that the methods they had at that time were not quite democratic. I am not certain, but it resulted in the setting up of the House of Delegates, I believe, and there has been a very marked change in the entire setup of the organization, and since that time I hadn't heard any criticism. I really think it is run by the lawyers of the country as a whole—those that are interested enough to come down there and participate in the welfare of the lawyers in the matters that interest the lawyers. And the House of Delegates is doing a remarkably fine job. The material they have there is really surprising, as I said, and you have to do a lot of work if you come there, especially if you are a new man. You have all the material given to you at once. It is rather difficult to digest—you can only get a few things—and, thanks to my friend Herb Nilles over here, he guided me through. If it hadn't been for him, it would have been very difficult. In a measure it is similar to what I suggested in my report to you in the School of Legislative Instruction, to give these new men who come into the Legislature some idea what

is to be expected of them and what they are to do and how they can go about doing the things they feel they ought to do to represent the state in their community, and the same thing is true with reference to the Member of the House of Delegates, but in one year or in one attendance you can't gather up too much. I think it may be advisable in the future for us to extend the terms of the state officer or the state representative of the House of Delegates to a period longer than one year. Up to now it was poverty, really nothing else, that prevented us from sending a member more than once. We felt if we made the President the Member of the House of Delegates, in that way we would have two in one and we will not only be represented by having someone of the state officers there, but at the same time also have a Delegate, and that was the reason we had adopted that practice, and formerly the President would resign. For instance, he is appointed for two years and the President would resign the second year and then the new President would take over. It may be advisable now for us to give some consideration to the matter of appointing a Member of the House of Delegates that would be going there for a few years, at least. I know that Herb Nilles really is well acquainted down there and well regarded by those that knew him, and it was quite a different matter to be on to the ropes, so to speak. As to the American Bar Association, I think every one of you is sufficiently informed to know something about it, but you won't know much about it until you have joined it.

I think the Sections that they have there are of extreme importance to every member of the Bar. While I don't belong to all of the Sections, I belong to some; if you joined you would be eligible to join some of the Sections, and I think you would find them very helpful in the particular field that you do most of your work in. Perhaps President Rix will touch upon that, but I do want to say that my impression of the American Bar Association work is very favorable and I am glad that the three members of our firm are all members of the American Bar Association. (Applause)

PRESIDENT RIX: Thank you, Mr. Mackoff. Now, Gentlemen, will you let me digress a moment to your own program which you have been putting on in connection with the tax work. I told Mr. Mackoff and others of the remarkable work that has been done recently, or in the last seven years, by the Bar Association of the State of Iowa. I went out there to speak at the annual session of the Tax School of the Iowa Bar. I found there 750 lawyers sitting there for three weeks and most of them had been doing that for the last seven years. So for those of you men who attended your session this morning, which cannot be commended too highly, I offer that as an indication of the length of time that it has taken the lawyers of Iowa to become thoroughly acquainted with the tax laws of the United States and their constant changes; but this is the significant thing which I want you to bear in mind: I was told that in that seven years it was estimated that the increase of fees to the lawyers of Iowa was between a million and a million and a half dollars per year out of the tax which formerly had gone to others, and not only that, that one lawyer after another testified to the fact that it was a permanent way of securing new clients who stuck to you after they had revealed to you their financial position. I offer that to you for a constructive thought of Bar work and I advise you to get in touch with the Bar of Iowa

as to its methods of operation. That Bar is now proceeding to put in a similar school for the study of administrative law matters, so that the lawyers of that state need not turn away any legitimate work arising under the new administrative rules and regulations rampant in this country.

Let me say to you one particular reason why I was so glad to accept Mr. Mackoff's invitation to come to North Dakota: You men have no realization of the position which you have in the working of the American Bar, not only the American Bar Association, but as a Bar as a whole, in exercising the influence which the lawyers of this country are exercising now as they never had before. Much of the work of Bar Associations, and that is true particularly of the American Bar Association, is legislative. We are closer to the United States Senate and to the House of Representatives in our work than we ever have been before.

In the Senate of the United States, North Dakota has two votes. You know those Senators by their first names. The lawyers in the big cities do not know their Senators and cannot exert the influence on those Senators that you men can exert, and it is because I want to point out to you that significant fact, is one of the reasons why I was so glad to come to this and other states with a smaller percentage of lawyers. You can see the significance of it, and you will see it as I begin to unfold for you some of the work now current in the American Bar Association and some of the work which has been accomplished. For those of you who have the American Bar Journal, some of the things I say to you will be entirely familiar, but to others it may be highly new matter.

In the past year there was organized in the American Bar Association a committee on the Federal Judiciary, the avowed purpose of which is to secure and more carefully select the Federal Judiciary. It has been felt for a long time that we were not exerting ourselves in that field. A committee of 11 or 12 has now been constituted under the leadership of Mr. John Buchanan of Pittsburg with power to investigate all nominations for the Federal Judiciary—to make reports, to oppose nominations—and not only to oppose nominations, but to propose nominations if good nominations have not been made.

As our first test of strength, Gentlemen, a nomination was made by the President at the insistence of Senator Wagner of New York. They insisted upon that nomination. Our committee went into action and registered a protest against that nomination on the ground of the unfitness of the man and his lack of experience. The committee went further, and in connection with the Association of the Bar of the City of New York and the New York County Lawyers Association of the State of New York, those committees recommended to the President the appointment of Mr. Harold Medena, a democrat, one of the greatest trial lawyers of New York, a great teacher of law, and a great Bar worker. He had been President of the Association of the Bar of the City of New York, President of the Lawyers' Club, and he was in every way qualified. We held a meeting in the office of the Attorney General and we were advised of the difficulties surrounding that question because the Senator from New York and Mr. Flynn were making it a personal political matter. Mr. Clark stated his sympathy with our views, and I then stated to him that I felt that that meeting,

unconsciously perhaps, was taking the first steps in this country to the foundation of a non-partisan Federal Judiciary.

We adjourned, and the committees went back to New York and began to make public the facts of this political appointment. That was followed by the withdrawal of the nomination, and the immediate confirmation of Mr. Harold Medena who is now sitting in the Federal Judgeship of New York.

In the recent contest in Texas when the President had nominated Judge Julie, the distinguished Senator from Texas, Mr. O'Daniel, as you will recall, objected on the ground of Senatorial courtesy. Senator Willie, the Chairman of the Judiciary Committee, made a brilliant speech in Congress on the subject of Senatorial courtesy and the necessity for its obliteration. Gentlemen, can you conceive of any particular reason why any one Senator of the United States from any state should have the right to block the appointment of one of the best men in the State of Texas to the Bar of Texas, to the Bench of Texas, just because he was politically obnoxious to that Senator? Well, the issue has been fought out in Congress and Judge Julie is now a distinguished member of the U.S. Bench of Texas.

Our record hasn't always been as good as that. Some men have been confirmed whom we have opposed, but it has only been after the most careful examination by the Judiciary Committee of the Senate. When I went into office, I went to my distinguished Senator, and before I could speak to him about what I had in my mind, he asked for the support of the American Bar Association in the consideration of appointments to the Federal Bench and asked for our cooperation. He followed that by a statement in the public press the next day of the purpose of the Senate Judiciary Committee to scrutinize all of these appointments with great care, and he said that for the first time the aid of the American Bar Association would be asked in those appointments. All appointments now filter through our Committee.

Just recently a distinguished Virginian was nominated for the Federal Bench. There wasn't a possible objection to him. For some reason or other they have tried to rush it through, and the Chairman of the Judiciary Committee replied that he was against rushing it through because the report to the American Bar Association Committee had not yet been received. When it was received, that man was promptly confirmed.

Now, Gentlemen, there is your American Bar Association in action in the Senate of the United States, and you will realize, I believe, better than you have ever realized before, that I meant what I said when I wanted to come out to speak to you because of your possible influence in these matters. Your two Senators have just as big a vote as any Senators in the United States, and in spite of your lack of numbers, you are just as efficient and potent in that work as the thousands of lawyers of Texas or the thousands of lawyers of California. We have been continuing that work with the Judiciary Committee of the House with other committees of Congress; never have we stood as close because of our closely knit organization representing every Bar Association of this country through your delegates and in our House of Delegates. You can see how we for the first time

are rightfully taking the position, and you can see, Gentlemen, the tremendous responsibility that it imposes upon us as lawyers of this country.

Now let me take you into the field of administrative law. For 15 to 20 years the American Bar Association fought continuously to secure the enactment of a law for the control of administrative bodies in the United States Government. Every known method of opposition was exerted against it. Finally, under the brilliant leadership of Mr. Carl McFarland, formerly of Montana, and through a series of most careful and most patient work backed by the work of two brilliant commissioners appointed by our body, one headed by Mr. Arthur Vandenberg, Congress finally was induced to pass an administrative law bill in both the Senate and the House by a unanimous vote. Lawyers all over the country were in conference with their Senators and their representatives to secure that action. Let me tell you what Judge Hutchinson, the brilliant Judge of the Circuit Court of Appeals of Texas of the Fifth Circuit said in California just last year in speaking of that bill. That in his opinion the supremacy of law was reestablished in this country by the enactment of the administrative law bill under which these great administrative bodies were finally brought under the law and not above the law. I want that to sink into you as a nature of the work that can be done by the lawyers of this country organized for effort and not for show, but for results! And let me point out further to you: Our proudest boast is that in all of this work we do not go before Congress acting for ourselves but for the people of the United States.

This administrative law bill that I speak of is in its infancy. Assaults will be made on it. Many improvements are necessary. Under that bill about 150 examiners are to be appointed at a salary of \$10,000, who are to be free and independent for the first time of the bureaus which they represent. These men came up for appointment by the Civil Service Commission of the United States. It was learned that it was the purpose of the Civil Service Commission to blanket all the men then acting as examiners without any examination, including the fit and the unfit. At our request, Senator Willie again went into action and wrote a letter to the Chairman of the Civil Service Commission in protest. As a result, a Commission was appointed on which Mr. Carl McFarland again sat to consider ways and means of appointing these examiners. Now, you will realize that in your practice when you go up against those examiners with power to find the facts, you want them to be free and independent men. You know how many times, particularly in labor matters, you went up against a man with preconceived opinions whose opinions could not be changed. As a result of those protests, the Civil Service Commission backed down and recently announced new rules under which those men who had a certain number of years of service and were appointed before the war would be blanketed if their records were good. All other examiners would have to take their chances with other lawyers from the country in those examinations with some credit for their service. Again, the highly significant improvement in the administration of administrative law worked out by our men and supported by the men in Congress.

There is much work to be done. There is pending a bill drawn by Carl McFarland again for the section of administrative law information to create uniform admissions to practice, so that if you are once



admitted or so that you may be admitted as lawyers; if you present your credentials you are automatically entitled to practice before any of these Federal bureaus, unless it requires special skill as in the Patent Department. Why shouldn't that be true? Heretofore you and I had to go in and be readmitted over and over again as we would practice before these Commissions. The accountants of this country said we were trying to put them out of business and that we were trying to fasten a monopoly on all the administrative work. At the Hearings a careful brief of our position was prepared by Mr. John Randall, of Iowa, on behalf of the Committee on Unauthorized Practice. That matter is now pending in Congress and will be up at the next Session, and it is a specific example of what you men can do by becoming informed on that subject and by talking to your members of Congress and to your Senators. It is most highly essential because we must have uniformity of procedure for admission to these bodies so that we can go on from there.

Now let me take you into some other fields in which this Association is working for the people of the United States. I can refer, of course to the unauthorized practice, to the raising of standards for admission, to the vast field of education—continuing education for lawyers—which will probably begin in the next year or two. So that pamphlets and booklets and publications of all kinds will be available to you men constantly so that you may keep abreast of the law, of the rapidly developing law, we are conscious of that. In many cities courses have been inaugurated and attended by hundreds of thousands of lawyers; it is impractical to do that in sections like yours, but we can give you the material so that you may be able to study constantly all of the developments such as you were studying this morning. That is one of the great services which we are trying to render for you.

In the field of the foreign service, foreign policy, our Association has been steadfast in the support of the United Nations. We have had a great committee at work in the Charter of the United Nations. There is a provision for the systematic development of international law, believing that that is one of the places we can do the most good for the laws of this country in the policy of education. Our committee of the United Nations is under Judge Ranson. A series of conferences were held in San Francisco in the United States on the subject of the World Court, which was under the direction of Judge Manley O. Judson, formerly a member of the World Court. As a result of the consensus of the lawyers of the country, about 750 of them who had then met in different meetings to consider the problems of having a World Court, a report was presented to the committees of Congress, and that report, Gentlemen, was used as a basis for the creation of the present Charter of the Court of the World Court.

Similarly, now, we have held nine meetings throughout the United States until we were held up by the illness of Judge Judson, in which the general subject is the "Rights and Duties of States." As a prelude to the report of the committee to the United Nations in which a commission has been formed, we have been working closely with the Secretary and the legal staff of the United Nations in this work. The form which has been adopted for the doing of that work in the United States was that recommended several years ago by Judge Phillips of Denver and resuggested by us at a meeting in the State

Department sometime in the winter. We are kept advised of all of those developments. You would be amazed to find the number of meetings which your President is called upon to attend with the various committees and sections of this organization in connection with the State Department, with other departments of Government; and the help that we render, I believe, is beyond comparison.

I could go on, Gentlemen, from one subject to another. The work never stops, and new things come up constantly. Just recently a distinguished judge, Chief Justice of the Supreme Court of Mississippi, wrote an article for the Journal, which many of you saw, on the subject of the return of power to the states, a subject which we should have been studying for years. It has been our neglect, to a great extent, that the power of the states has been slipping from us. As I said to your Governor this morning, there is one agency in the United States which saw the dangers years ago;—the Council of State Governments, of which the Council of Governors is a part, has been fighting the encroachment on the powers of the states for years. It is the one agency in the United States which seemed to have sense enough to resist it. This Supreme Justice of Mississippi demanded action and your Association is now going into work with the appointment of a committee of brilliant jurists selected from all over the United States, with Judge Alexander of Mississippi as Chairman, to study and report to the American Bar Association on the subject of the return of power to the states. To the return of power in cases of joint jurisdiction, you recall the recent decision of the Supreme Court of the United States practically knocking out of the window all of the labor legislation by the states of this country except in police jurisdiction. It is an intolerable situation which we must meet.

Gentlemen, as you consider these problems with us, you come down to this: That they resolve themselves into the question of good government, in the supremacy of law over men; and they resolve themselves down further into this also: That it isn't just a question of good Federal Government, or it isn't just a question of your sitting here in this state and considering how you can improve the administration of justice as you and I have known it, but it gets right down to the question of the government in your court houses and in your city halls. You will hear me say tonight, and I don't hesitate to say it over again to you now, that you can't have good administration of justice in corrupt or inefficient centers of government. The courts will be no better than the administration given by your aldermen and by your county boards and by your state governments. And if we never have worked in those fields before, we must begin to work in those fields now; and we cannot confine the work of this Bar Association or any other Bar Association any longer to our favorite subject of administration of justice as we know it. We must be for good government in all branches to back that work in the United States. We are appointing a distinguished council of 20 or 25 men who by their records have demonstrated their unselfish devotion to public interests. You have such men in this state, many of them. There are many of them around the United States not in office, others in office who have been distinguished servants of the public. It is those men we are asking to serve on this Commission to take the leadership and to back up every movement for good government in this country.

If you will bear with me just a minute, I will tell you of an experience I had at Miami in the winter. One of the reasons I accepted the invitation to speak in Miami after I had spoken in Florida three times was because I knew of a brilliant report which had been made by a committee of the Bar Association to the Grand Jury of Day County, Florida, in which at the time characterized the government of that county as the worst in the United States, the worst crime-ridden city and county in the country. You can imagine how three young lawyers felt when that report was made public. They took it on the lam and they needed help and support, and when I got down there I was interviewed by the press and the first question they popped at me was what did I think of that report? I said it was a splendid performance and one reason I was down there was to give support to that movement and to tender to those men the services and the men of the American Bar Association, no matter whom they wanted, I would send down to them any representative of good government of the United States Bar. The newspapers gave it a great spread and the day after, the Miami Herald printed an Editorial a page in length pointing out the part which lawyers can play in good government. They quoted what I had said: That you could not have good courts in corrupt centers of government; and then it went on with the most remarkable dissertation of the part that the lawyer can play in good government that I have ever seen written any place. Gentlemen, that can be done! Not only in Miami; it can be done every place in the United States if you and I are alert to our job. This is the job that your association is doing, and doing only through you and with you. I am glad to be here and I am glad to testify to the kind of work that we do and to ask what I know we will get: Your continued support; your membership; your attendance at the annual meetings; your cooperation with us, so that your association may work more closely day by day with us.

I thank you for the opportunity of having this chance to speak so intimately to you. I don't get many chances like this. Thank you. (Applause)

PRESIDENT MACKOFF: Thank you, President Rix, for a most interesting and inspiring talk, and I am sure we will be looking forward to hearing you this evening on the other topic that you had mentioned here this afternoon.

MR. NOSTDAL: Mr. President, it is customary when we have a distinguished visitor like we have today that rendered a great service by giving us his talk, to elect him to be an honorary member of our association. I don't know what honor we can confer on Mr. Rix by electing him, but I assume he would consent. I move you, Mr. President, that Mr. Carl Rix be elected an honorary member of the North Dakota Bar Association.

PRESIDENT MACKOFF: Members of the Bar: I don't know whether you heard this motion that was made by Mr. Nostdal because of the commotion that existed here for a while. He nominated President Rix as an honorary member of the North Dakota Bar Association. Is there a second to that motion?

MR. STUTSMAN: I second the motion.

PRESIDENT MACKOFF: All in favor will signify by saying "Aye"; contrary the same. Motion prevailed. President Rix, I welcome you as an honorary member of the North Dakota Bar.

PRESIDENT MACKOFF: All right, Gentlemen, let's get back to the business part of the meeting. Are there any other reports of committees that we haven't acted on? If there are any reports we will consider those now.

MR. BURDICK: Mr. President, I nominate Mack Traynor as a Member of the House of Delegates to the American Bar Association from this Association for the coming year.

PRESIDENT MACKOFF: That is for the two-year period?

MR. BURDICK: For the ensuing term.

MR. DUFFY: I second the nomination.

PRESIDENT MACKOFF: Clyde Duffy seconds the nomination. Are there any other nominations for this office? If not, we will consider the nominations closed. All in favor of the nomination of Mack Traynor as delegate for the ensuing term to the American Bar Association will signify by saying "Aye"; contrary the same. Motion prevailed. Mack Traynor, you have been duly nominated and elected as the delegate for the ensuing term to the American Bar Association.

Are there any other committee reports? I will consider your Resolution of Commendation that you mentioned before with reference to Mr. McBride.

MR. NOSTDAL: Mr. President, I think we will make a motion. A motion will be sufficient, will it not?

PRESIDENT MACKOFF: We can have it in the form of an oral resolution.

MR. NOSTDAL: I move that in consideration of the services rendered by our outgoing Secretary, M. L. McBride, in carrying on the work as Secretary-Treasurer during the trying times of this Association with very little remuneration, that a vote of appreciation be extended to Mr. McBride for his services and also the wish of this Association of long life and future years of service.

MR. NORTON: Mr. President, for more than 40 years it has been my good fortune to have the acquaintance of Attorney McBride. I have known, as the other members have, of the magnificent work he has done during the past many years as Secretary of the organization. I haven't in mind any member of the organization who has done more to build up and strengthen the organization into its present condition than Attorney McBride, and I feel that there is no high honor that this organization could extend to Attorney McBride that he wouldn't richly deserve; and it gives me great pleasure to second the motion that has been made to recognize his grand work for the organization and I wish him well in future years.

PRESIDENT MACKOFF: Any comments or discussion? If not, all in favor of this motion or resolution will signify by saying "Aye"; contrary the same. Motion unanimously carried. Mr. McBride, on behalf of the members of the North Dakota Bar Association, it is my pleasure to inform you that the Association by its resolution has declared that it has great appreciation of your services rendered in

the past, I think, 12 years for this Association and with it goes the thanks of every member of the Association to you and the wishes for many useful and serviceable years and good health and happiness to you. (Applause) Yes, Gentlemen, and Mr. McBride did serve us during the difficult period as we know, during the past 10 or 12 years when things didn't go so well, and he has done a fine job.

Now, are there any other reports of committees? If not, we will proceed to unfinished business and to new business.

MR. LUNDBERG: Mr. President, am I right in my impression that the Resolutions Committee has not yet reported?

PRESIDENT MACKOFF: You are right that they have as yet not rendered the report.

MR. LUNDBERG: Perhaps this is not the time when they customarily render it.

PRESIDENT MACKOFF: Well, does the Resolutions Committee feel that it desires to render its report or do you want to hold it to add something further?

MEMBER: The Resolutions Committee is not ready to report yet. We thought we were ready but we find that we want to consider another resolution.

PRESIDENT MACKOFF: Very well, we will carry that over either until later or sometime tomorrow. Now, if there is no other report of any kind to be rendered, is there any unfinished business? If not, we will proceed to the consideration of any new business to come before this body.

MR. BURDICK: Mr. President, I move to file the following amendment to the Constitution and By-Laws to the State Bar Association to be voted upon at a succeeding annual meeting of this Association. The suggested amendment here is printed, but I will state orally that the purpose of the amendment to Article V of the Constitution and By-Laws is to make the Dean of the Law School of the University of North Dakota an ex-officio member of the Executive Committee and also to provide that in any District Bar Association where they have failed to elect a President within one year preceding the last annual meeting, that the President of this Association shall have authority to fill the vacancy by appointment.

PRESIDENT MACKOFF: Mr. Burdick, I don't have the Constitution or By-Laws here with me. Am I right in my assumption that we merely receive the amendment now to be filed and voted on and acted on at the next year's meeting, is that correct?

MR. BURDICK: That is the way I understand it.

PRESIDENT MACKOFF: Are there any objections to the filing of this amendment?

(The motion was seconded at this time).

PRESIDENT MACKOFF: There is a motion that has been seconded for the filing of this amendment, and to be voted on at the next year. All in favor signify by saying "Aye"; contrary the same. Motion prevailed and the Secretary is ordered to file this amendment and to present it to the meeting next year to be acted upon.

Is there any other new business to come at this time? If there isn't, Gentlemen, we will be recessing. If you have anything in mind it would be well to dispose of it now.

MR. BURDICK: Well, Mr. President, I dislike very much to monopolize the floor.

PRESIDENT MACKOFF: That is all right. If you have anything in mind, go ahead.

MR. BURDICK: The Fifth Judicial District Bar Association instructed me as District President to present a proposition for consideration by this Association and refer it to the Legislative Committee. It was unanimously recommended by our District Association that we refer to the Legislative Committee by action of this Association a proposal to have the Legislature adopt a measure to determine joint tenancies and to have the proper court, either the county court or the District Court, as was deemed advisable, to hear a petition to determine joint tenancy estates and to fix the estate tax thereon and to have a decree certifying to the fact of death and to the fact of payment of the tax recorded so as to conclude once and for all the fact of determination of the joint tenancy estate and the payment of the tax; and at this time in behalf of our District Association, I move that a proposal of that character be referred to the Legislative Committee for consideration and submission to the next session of the Legislature.

PRESIDENT MACKOFF: Is it my understanding that you have reference to some court procedure similar to what they have in Montana and other states, that you have a Judicial Decree determining the death of the party and the transfer of the title to the survivor? Is that right?

MR. BURDICK: I might add in support of this motion that we would desire to pattern this legislation along lines similar to that now endorsed in the State of Montana where they have a proceeding in their District Court which is also their Probate Court, and a petition is filed and a notice of the filing of the petition is given for, I believe, two publications and a hearing is held and the court determines the fact of death and also determines the amount of the state tax, if any, to be paid, and a decree is entered and recorded; and we would like to see legislation along those lines adopted by our State Legislature. In Montana it is only one court, it is the District Court which is also the Probate Court, and that would be a matter for the Legislative Committee to determine, whether it would be District Court here or County Court.

MEMBER: Mr. President, I would like very much to second that motion. That is in line with a motion I made in the sectional meeting yesterday afternoon and the motion was withdrawn as it was not the proper time or place. I am very happy to second the motion of Mr. Burdick.

PRESIDENT MACKOFF: Is there any discussion with reference to this matter? If not, all in favor of this motion will signify by saying "Aye"; contrary the same. Motion is declared carried and the Legislative Committee will be duly informed by the incoming officers of the resolution of this Association.

Before I forget I desire to make a correction that had been called to my attention. Is Attorney General Johnson here now. He left, I

believe. Well, anyway, it appears that in the July 1947 issue on page 46 in the Public Relations Committee report there has been an error. Former Attorney Al C. Strutz called my attention to this error. "Attorney General Lincoln obtained the necessary information for preparing the cases and time spent in preparing and submitting Briefs. Attorney General Alvin C. Strutz and his entire staff spent a considerable amount of time in handling these cases and preparing Briefs." Now Mr. Strutz informs me that it was Mr. Johnson and his staff that had done this work, but through misapprehension they had put in the name of Mr. Strutz instead of Attorney General Johnson to whom the credit is due for this particular work, and under these circumstances I will consider a motion to amend this to change the name of Alvin C. Strutz on page 46 of the printed Public Relations Committee report in the July issue of Bar Briefs.

MR. PLOYHAR: Mr. President, that should fall justly on my shoulders; and also due to the fact that I want to whitewash the rest of the Committee because they didn't know about it, I will certainly be glad to move that amendment and openly apologize to Mr. Johnson for making such a gross error. In other words, I have become confused between Mr. Johnson and Mr. Strutz because they have been such good Attorney Generals that I hardly know the difference.

PRESIDENT MACKOFF: Roy, I didn't know you were the Chairman of the Committee; you generally don't make mistakes.

MEMBER: Mr. President, I wouldn't want Roy to take that responsibility. He and I worked nights on that report, so therefore I want to second it.

PRESIDENT MACKOFF: Is this going to develop into a confessional telling us about all your mistakes and errors? You have all heard the motion on the part of the Committee who made this error seeking to correct it as best they can at this moment, and if there is no discussion . . .

DEAN THORMODSGARD: I think it would be quite appropriate if the Editor of the Bar Briefs would print the correction also.

PRESIDENT MACKOFF: Would you make that in the form of an amendment?

DEAN THORMODSGARD: Just courtesy and policy of all publications.

PRESIDENT MACKOFF: Very well, then, we can merely take that as a gesture and then I will incorporate it. All in favor of this motion will signify by saying "Aye"; contrary the same.

MR. MASON: Mr. Chairman, I discussed this matter briefly with Mr. Johnson during the noon hour and he or someone in his behalf said he didn't at the same time wish to belittle the work of Mr. Strutz. He said Mr. Strutz had done some nice work in connection with it.

PRESIDENT MACKOFF: Thank you, Mr. Mason. The motion is declared carried. However, it shows that even the best Committees are not infallible, and I always thought Roy was infallible, but now I can see he makes mistakes as I do and the rest of us.

MR. NOSTDAL: Mr. President, I would like some information. If the Legislative Committee limited the recommendations made by the

Convention, can't they initiate or propose laws upon the order of the Executive Committee, or are they limited to the suggestions by the Convention?

PRESIDENT MACKOFF: It is my understanding that they are not limited except when there is an expression by this body on a certain measure that then the Executive Committee and the Legislative Committee in turn will be governed by the wishes of the Association. Assuming that this Association went on record as favoring, for instance, the measure that we just had in spite of the fact that some of the members of the Executive Committee or Legislative may feel otherwise, as far as the Association is concerned, we are in favor of it, and the same is true if we are opposed to a measure; but I don't understand that the Legislative Committee is hampered in any way from approving any measure which they believe is necessary when not acted on by the Association. During the last session of the Legislature we did the best we could in going through as many of the measures as we thought we were interested in and either approved or disapproved; or, if there were measures we thought should be introduced, we did the same thing; and if we made errors or did some things that didn't quite meet with the approval of some of the members, I want you to know that it was all done in good faith and with the idea of benefiting the Association, not any particular lawyer.

MR. NOSTDAL: I think you did a good job.

PRESIDENT MACKOFF: Thank you.

MR. PATTERSON: Mr. President, I would like just a moment. It was I who requested the Bar Association to represent those aliens at Fort Lincoln, and while I personally thanked the various attorneys who appeared for the aliens at Fort Lincoln, I have never done so publicly and I wish to do so at this time. The service rendered to those aliens was all rendered free of charge, and I believe every alien who wanted representation had it, and they were represented exclusively, I think, by members of the Burleigh County Bar and the Morton County Bar. I may be wrong in that. Maybe a few others were represented by some lawyers farther away, but I don't think so. Since those Hearings were conducted, I have severed my employment with the Government, and while I never asked my superiors what their attitude was, I am sure that I can say it was greatly appreciated. I am sure the Government would approve of my saying that. When these Hearings were being held and the aliens had no representation, I felt that they were entitled to it even though they could not pay for it, and the response that I received from the Burleigh County Bar and the Morton County Bar made me proud to be a lawyer myself. Thank you. (Applause)

PRESIDENT MACKOFF: Thank you, Mr. Patterson. It is a fine commentary on the Bar of the State of North Dakota to know that we have lawyers in our midst who are willing to give freely of their time to help others, and this is truly the land of democracy where we give the alien and any other person an opportunity of justice in our courts, and it is no wonder that people in other lands look to our country for guidance in developing their own countries where they can hope to get the freedoms we are enjoying. I am afraid it will be a long time before many of them in the other countries will get it, but nevertheless, it is a fine thing for us to hold up these examples,



and I am glad that the North Dakota Bar has been able to do this work and been able to go on record to show that we still believe in democracy and we want to carry it on and to give every man his day in court. And thank you very much for your efforts in this behalf. I assure you that the members who participated are appreciative of the word you said, Mr. Patterson.

Is there anything further? It is a little warm and perhaps we had better recess until tomorrow at 11 o'clock. We are going to have the lectures at 8 o'clock and the unfinished business will be taken up at 11 o'clock. I want to remind you the banquet is to be at the Patterson Hotel this evening at 6:30. I hope that you will all be there and your wives will be there and that we will have a fine turnout.

... At this point President Mackoff announced that up to this time there had not been enough members wanting the lecture courses of Professor Rottschaefer to warrant the court reporter going ahead and mimeographing the courses, since 50 was to be the minimum number ... The following motion was made as a result of that announcement:

MR. TRAYNOR: Mr. President, I think we are so close to 50 that the Association should order 50, and undoubtedly there will be orders from some members who haven't put in their names, so I would move we order fifty transcripts.

MR. LUNDBERG: Mr. President, I was about to suggest that when we returned home I felt sure a dozen or so of the lawyers who are not here might well want to get a copy and we could make up the number, but I think the suggestion of this gentleman here is excellent because no doubt the Association can dispose of those extra copies.

PRESIDENT MACKOFF: Do you second his motion?

MR. LUNDBERG: Yes.

PRESIDENT MACKOFF: Is there any discussion on that? If not, all in favor of this motion will signify by saying "Aye"; contrary the same. The motion prevailed. Mr. Erickson, you will prepare fifty transcripts and the Association will be responsible for the balance over and above 33 or 34, whichever may be necessary.

If there is nothing further, Gentlemen, we will recess until tomorrow morning at 11 o'clock.

### AUGUST 27, 1947

The annual meeting was again resumed on the 27th day of August 1947, at 11 A. M., President H. A. Mackoff, presiding:

PRESIDENT MACKOFF: We are going to continue the business meeting. Now, the first order of business will be the consideration of any committee reports. While we are waiting for that I want to take this means of thanking Miss Morris particularly for the fine work she did in keeping our registration list here and taking care of our members as they came here to the city. Miss Morris, you did a very fine job and the members of the Bar in North Dakota want to express their appreciation to you. She was the only lady member of the Bismarck Bar and she did an excellent job of it. I also want to extend our thanks to Miss Leslie for the services she has rendered the Association during the year in connection with our Bar Briefs and other

matters she was called upon, as well as the work she did during the session.

Now, is the Resolutions Committee ready to report?

MR. DUFFY: Yes.

PRESIDENT MACKOFF: The Secretary will read the report.

#### REPORT OF RESOLUTIONS COMMITTEE

"Be It Resolved by the North Dakota Bar Association:

"1. That this association expresses its sincere appreciation to the members of the Burleigh County Bar Association and to the citizens of Bismarck for the many courtesies extended and friendly atmosphere created during the 46th annual convention of this association.

"2. That this association expresses its appreciation of the fine services given and the unusual accomplishments of retiring President H. A. Mackoff, and to the members of the Executive Committee, who are especially to be commended together with the Legislative Committee for the outstanding work done and the splendid results accomplished in the legislature. We commend the employment of an executive director to develop the program of the association.

"3. That this association extends to Professor Henry Rottschaefer of the University of Minnesota, its deep appreciation of the learned lectures on the subject of Federal Taxation and to Honorable Carl B. Rix, President of the American Bar Association, for his presence and fine address to this body.

"4. That we approve the establishment of an institute in legislative procedure for the service of members of the legislative assembly who may desire to avail themselves of such facility."

CLYDE DUFFY, Chairman

E. J. McILLRAITH

ALVIN C. STRUTZ

PRESIDENT MACKOFF: Now, all in favor signify by saying "Aye"; contrary the same. The motion prevailed and the report is adopted and will be printed with the other reports.

I wonder if there are not some reports that are printed in the July issue of Bar Briefs that had not been acted on here. I am not certain; I don't have my issue of Bar Briefs, but if there are any printed reports and there are any members here who were on the committee and desire to act, I will be glad to consider the motion.

MR. PLOYHAR: Mr. President, the report of the Public Relations Committee was mulled over yesterday and modified, but I don't believe it was reported or approved; and at this time I would move the adoption of that report.

PRESIDENT MACKOFF: Is there a second to that motion?

MR. STORMON: I second the motion.

PRESIDENT MACKOFF: Any remarks? All in favor signify by saying "Aye"; contrary the same. Motion prevailed.

PRESIDENT MACKOFF: Are there any other reports that have not been acted on?

MR. LUNDBERG: Mr. President, I would like to present to this Assembly a Resolution touching a matter that has concerned me for many years, and I believe will be of some concern to my fellow members of the Bar, if I may have the privilege.

PRESIDENT MACKOFF: Is that under the order of new business? If there is nothing further in connection with committee reports, then we will get to this order of business, if it is something new. If there are no other reports to be—

MR. NOSTDAL: Mr. President, I believe the Memorial Committee has not reported.

PRESIDENT MACKOFF: Well, the practice has been to print all the Memorials in Bar Briefs as they came up. I don't know whether it really will be necessary to adopt any report in connection with them, but if you think so, we can have that. What is the consensus here of the members? How do they feel about it? After all, it is the respect we pay to the departed member by giving some little statement concerning him, and the practice has been to put it in while the matter is in the minds of the members shortly after the member passes away, rather than wait until the annual meeting and present them all. At least, that is what we thought would be the better way to handle it. If you feel that it is the proper way, we will so continue. I would like to have an expression from the floor. There being no expressions from the floor, it will be presumed that this practice will be agreeable to the membership until further action may be taken in the case.

Very well, we will now revert to the order of new business.

MR. LUNDBERG: In order that the resolution I shall offer and its purpose might be understood, I should perhaps make a brief statement as to my reasons for offering it. All of you are aware that Section 101 of the State Constitution reads as follows:

"When a judgment or decree is reversed or confirmed by the Supreme Court every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefore shall be concisely stated in writing, signed by the Judges concurring, filed in the office of the clerk of the Supreme Court and preserved with a record of the case. Any Judge dissenting therefrom may give the reason for his dissent in writing over his signature."

During the 15 years I have been in practice, my experience has been that this provision has been honored in the Briefs rather than the observance. I think you will agree with me that it is notorious that there is a growing disposition to confine decisions to one or a few points and to ignore the other points raised upon the record even though the deciding of those other points would result in a decision of important points of law. Now, the only safeguard, the only recourse we have in a court of last resort is the public effect of the published opinion—that its effect upon the Bench and the Bar and the public generally is the only safeguard—and no doubt it was the purpose of this Constitutional provision to secure that safeguard and to insure by this requirement the best possible consideration of all questions that came before the court. Now, I will not suggest that the court in this practice is remiss in what it conceives to be its duties. If you care to take down a reference you will find in 24 N.D., page 120, 138 N.W., 1114, where it explains and seeks to justify its practice, and instead

of satisfying me, I think that opinion illustrates a disposition on the part of the court to make a virtue out of what I think is a vice, and that is all the more reason why we as members of the Bar should express our concern and our disapproval of this tendency. With that idea in mind, Mr. President, I would like to offer this resolution:

"WHEREAS, Improvements in the administration of Justice is, and ought to be, a continuing concern of all attorneys and of the Association which represents their common interests, and

"WHEREAS, There appears to be a growing disposition on the part of Courts, and particularly Courts of last resort, to limit their decisions and their opinions to one—or a few—instead of taking in all the points of law fairly arising upon the record, thus leaving undetermined and undecided many questions of law, the determination of which would be a public benefit and an aid in the administration of Justice,

"NOW THEREFORE, Be It Resolved that we deplore and depreciate the restricted decisions and opinions above referred to, and respectfully urge upon the Courts the adoption of the practice of freely and fully determining every question of law fairly arising in connection with a case, and

BE IT FURTHER, Resolved that we instruct the Legislative Committee of the Bar Association to consider whether Section 101 of the State Constitution should be implemented by legislation or by Court Rules under the provisions of Section 27-0208 and following."

That Section, I might say by way of explanation, is the Section which provides that the Court may make certain rules of practice and procedure.

May I add a word of explanation. I am not at all certain what the remedy for this condition ought to be, nor am I certain whether a Court Rule would be the most satisfactory way of dealing with it. These are matters that should be carefully considered in conjunction, I think, with the Court itself, and what I have in mind doing here was to raise the issue and ascertain the consensus of this Association; and with that in mind I move the adoption of this Resolution.

PRESIDENT MACKOFF: Is there a second to that motion?

MR. SMITH: I second the motion.

PRESIDENT MACKOFF: Are there any remarks or discussion? I want to remind you that we are still working under that rule of the limitation of time, particularly now when we intend to adjourn before noon, so that if there is any discussion on it we would like to hold it down not over five minutes and perhaps we had better limit it to only one time.

MR. CONMY: I move the resolution be placed on the table until next year. We can't intelligently pass on it unless we assume that the facts as stated are correct, namely that the courts have not passed upon material points of law that have been raised, and personally I don't know of any such situation of that kind that exists heavily—I mean I am talking about points of law that would change the result. I think the Court undoubtedly has the right to ignore something that is purely academic that wouldn't change the situation at all; and certainly none

of us want to have our law books cluttered up with a lot of that kind of stuff. So I make this motion in all sincerity with the idea that we develop the facts—first find out whether that situation does exist.

PRESIDENT MACKOFF: Is there a second to that motion?

MR. PORTER: I second the motion.

PRESIDENT MACKOFF: Any discussion? If not, all in favor of the motion to table the resolution will signify by saying "Aye"; contrary "No." The motion, in the opinion of the Chairman, in favor, prevails. In the absence of a standing vote I will so declare it. There being no request I declare the motion carried and the resolution will be tabled.

MR. NOSTDAL: Mr. President, this wasn't tabled; it was just held over to the next meeting.

PRESIDENT MACKOFF: Tabled over to the next meeting, is that right? At least, I understood you to say that it would be tabled until the next meeting or laid over. Well, I don't think it makes any difference; it would be the same effect, I believe.

Any other new business?

MR. HIGGINS: President Mackoff, as Chairman of the Unauthorized Committee, the matter has come to my attention that I took up with officers of the Association. They felt it was apparently not properly within the realm of that Committee, and I was inclined to agree with that too. Apparently there is no committee now to deal with it and I think it should be as it is little short of a disgrace to the Bar. We have at the present time on the list as licensed attorneys in the State, three convicts; they are not convicted of ancient crimes that someone has dug up and have been forgotten, but two of them were convicted of matters dealing with improper conduct of the courts, even though not our state courts, and another with a serious felony dealing with the handling of bank funds. Apparently, for one reason or another, our present procedure is not properly functioning on it because I am not ready to pre-judge what the decision should be on those men, but I am ready to say that I think it shouldn't be ignored and that something should be done about it—that those men should be brought up for disciplinary action and proper disposition made of that in accordance with the authorities dealing with that particular practice.

Now, I think that there should be a committee in the Association itself for them. I think that for several reasons. In the first place we know that in many instances these fellows that get over on the wrong side start out with relatively minor matters; sometimes that is the case of a young man; occasionally it is the case of an experienced practitioner because he is hard-up, or for one reason or other he has attempted to get over on the wrong side.

I am reminded something of a man who himself felt he was in that category. He met young Tom Burke shortly after he was admitted to the bar. He said to him, "You are on the right side of the street, the sunny side of the street, stay there; no matter what a man tempted may think about it or what he may feel the justification is at the time, if you ever cross over to the shady side you can't go back." And cer-

tainly that is true if you stay very long on the shady side. I think, therefore, we should have a disciplinary committee, not only to take up these very serious offenses which we should not ignore and the public will feel the Bar is perfectly oblivious to so long as we ourselves are allowing it to go on. I think we ought to have that kind of committee that ought to take up the minor infractions. I don't know what exactly the procedure should be to be taken on that, but I think we should have some kind of a committee. Maybe we should call it the disciplinary committee; maybe it should have some other title, but we should have some committee whose duty it is to take that up. Too many laymen feel that the practice of the law is a kind of racket, and when we ignore men who have been convicted of felonies we certainly add fuel to that kind of contention, and I move you that the Chair set up a temporary committee to deal with what should be developed; if a permanent committee if that requires a change in the Constitution or By-Laws.

PRESIDENT MACKOFF: May I ask, in this motion you contemplate the incoming Chair?

MR. HIGGINS: I have that in mind.

PRESIDENT MACKOFF: Not an appointment of anyone right now?

MR. BURDICK: I second the motion, Mr. President.

PRESIDENT MACKOFF: Any remarks? If not, all in favor signify by saying "Aye"; contrary the same. Motion prevails.

PRESIDENT MACKOFF: Any other new business? Before we proceed to close, is there anyone here that feels the urge to extend an invitation to the Bar Association to some other city for the next year? The Executive Committee determines the place of the meeting, but if there is anyone that feels that he is so proud of his city that he wants the Bar to come over there and show off his community and wants to speak his mind, he might make that suggestion.

MR. DAVIES: Mr. President, there seems to be considerable reluctance on the part of some of the other larger communities to extend an invitation for the 1948 convention; therefore as President of the Grand Forks County Bar, I am instructed to invite the convention, if it sees fit in 1948, to the City of Grand Forks. (Applause)

PRESIDENT MACKOFF: Thank you. Are there any rivals? Well, if you change your mind later on you can still inform the Executive Committee. Well, if there isn't anything further I will proceed to adjourn the meeting.

MR. BURDICK: I move we adjourn.

PRESIDENT MACKOFF: Well, the motion will be in order, but I want to again express to you my appreciation for the honor that you have conferred on me. It was really a pleasure to serve you the past year, and I want to take this means of extending thanks publicly to the Executive Committee. If Mack Traynor is going to have his Executive Committee work as well as my Executive Committee worked with me I have every confidence that you will have a successful year, and I haven't any reason to think that his Committee will not work as well as mine did. I thank each and every one of the members of my Committee publicly for the fine service. They always came. They

laid their work aside and came, and by doing so we were able to render a better service for you. There is a motion to adjourn.

MR. NOSTDAL: It seems to me Mr. Higgins made a motion. Was that acted on?

PRESIDENT MACKOFF: It was acted on and carried.

Before I adjourn, I am tendering you, Mack Traynor, the gavel. It isn't mine. It doesn't belong to me, but I am giving it to you any way. You will have the pleasure of closing the meeting here. Mr. Traynor has been waiting for this moment so anxiously. He said I will be through at 12 o'clock and it is about 15 minutes earlier than you hoped for, Mack.

MR. TRAYNOR: We have a motion to adjourn. All in favor signify by saying "Aye."

The motion carried unanimously.

